

In The
UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS

Catherine Cornell,)	
Appellant,)	No. 15-3191
)	
v.)	
)	Submission of
Robert A. McDonald,)	Supplemental Authority
Secretary of Veterans Affairs,)	
Appellee.)	
)	
Bobby S. Moberly,)	
Intervenor)	

Pursuant to the Court’s Rule of Practice and Procedure 30(b)

Intervenor Bobby S. Moberly, through undersigned counsel, brings to the Court’s attention the recent panel opinion in *Bly v. McDonald*, CAVC No. 15-0502. Mr. Moberly submits that this authority is relevant – and directly contrary – to Appellant’s continued argument that her fee must be paid in full because *only* the requirements of 38 C.F.R. § 14.636 apply in determining whether a fee is owed to her. *See, e.g.*, Appellant’s Supp. Br. at 9-10 (arguing that a “valid fee agreement” is determinative of right to fee).

Contrary to Appellant’s position, the Court recently held completely the opposite.

The Court has repeatedly affirmed that the statutory history governing payment of attorney fees in the VA benefits context reflects “congressional intent to protect veterans benefits from

improper diminution by excessive legal fees,” and the Court has noted that many veterans could be deprived of rightful benefits if the Court allowed all attorneys, without regard to individual circumstance, to collect a full 20% of past-due benefits. *Lippman v. Shinseki*, 23 Vet. App. 243, 253-54 (2009) (quoting *Scates v. Principi*], 282 F.3d [1362,] 1366[(Fed. Cir. 2002)]). Caselaw is clear that in reviewing fees for reasonableness, the Secretary may consider not only the factors set forth in 38 C.F.R. § 14.636(e) but also other factors pertinent to the specific circumstances of the case. See *Lippman*, 23 Vet. App. at 253-54 (referencing [38 C.F.R.] § 14.636(e) factors as well as those set forth in *Scates*, 282 F.3d at 1368-69, where during the appeal process an attorney was replaced with a successor); *Lippman v. Nicholson*, 21 Vet. App. 184, 189-90 (2007) (noting that, “in the veterans-claim context . . . direct payment of attorney fees is limited by law to 20 percent of past-due benefits, and is further limited to a reasonable fee *under the circumstances of the case*” (emphasis added)); see also [38 C.F.R.] § 14.636(e) (2016) (indicating that considerations relevant to determining reasonableness of fees include extent and type of services performed, complexity of case, level of skill and competence required, time spent, results achieved, level of review to which the claim was taken and at which the attorney was retained, rate charged by other representatives, and whether and to what extent payment was contingent on results).

Bly v. McDonald, CAVC No. 15-0502(E) (Oct. 7, 2016) at *10

(underlined emphasis added). This precedential opinion and its underlying analysis fully supports Mr. Moberly’s position that Appellant is not owed any of the dispute attorney fee because she *did not earn* any part of it. At the very least, the opinion disposes of Appellant’s arguments that (1) only the explicit criteria in 38 C.F.R.

§ 14.636 determine whether an attorney must be paid a fee and (2) an attorney must be paid the full fee agreed to in a valid fee agreement whether or not the attorney did anything to earn that fee.

WHEREFORE, Intervenor Bobby S. Moberly respectfully submits the above supplemental authority for the Court's consideration.

Respectfully submitted,

/s/ Douglas J. Rosinski
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